

SUMMARY

With the enactment of the Telecommunications Act of 1996, the divested Bell Operating Companies ("BOC") were permitted to provide out-of-region interLATA service. The BOCs will enter these markets with no market share and will compete with other "non-dominant" interexchange carriers such as AT&T Corp., MCI Telecommunications Corporation, and Sprint Communications Company, L.P. Thus, comments urging the Federal Communications Commission ("Commission") to regulate the BOCs as dominant carriers in these markets are not based on reality.

U S WEST submits that the separate subsidiary requirement has no basis in any market power analysis and should be eliminated. The Commission is urged to terminate this proceeding and allow the BOCs to proceed in accordance with the Telecommunications Act of 1996 to provide out-of-region interLATA services as non-dominant providers without a separate subsidiary requirement.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Bell Operating Company)	CC Docket No. 96-21
Provision of Out-of-Region)	
Interstate, Interexchange Services)	

REPLY COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby files its reply comments in the above-captioned docket.¹

This docket is essentially a "no brainer." The divested Bell Operating Companies ("BOC") are now permitted to provide "out-of-region" interLATA service without a separate subsidiary based on an explicit act of Congress.² In this market, the BOCs have no market share, no brand identification, and must compete against international giants much larger than they are -- giants which are deeply entrenched in the very same market. The Federal Communications Commission's ("Commission") rules now provide that local exchange carriers ("LEC") providing

¹ In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, Notice of Proposed Rulemaking, FCC 96-59, rel. Feb. 14, 1996 ("Notice").

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Telecommunications Act").

interexchange services via a subsidiary are treated as “non-dominant”³ -- and, as such, BOCs choosing the vehicle of a subsidiary can provide interLATA service today upon the filing of a non-dominant carrier tariff (and without the filing of a Section 214 application).⁴ This salient fact is, or should be, non-controversial and self-evident. After all, the notion that a competitor providing no service at all could disrupt competition by raising the price of a non-existent product or reducing the production of something never produced (the tests for dominance under the Commission’s precedent) cannot provoke serious response.

I. THIS DOCKET DOES NOT PRESENT A LAWFUL OPPORTUNITY TO RESTRICT COMPETITION IN THE INTERLATA MARKETPLACE

The real issue raised in the Notice is whether the BOCs should be subjected to the same subsidiary requirements currently applied to other LECs (or, more accurately, whether, in the absence of use of such a subsidiary, BOC out-of-region interLATA services should be treated as dominant carrier services). This issue is itself intriguing (and is discussed in Section II below) and must be addressed via a rulemaking. But many of the comments in the docket suggest that the Commission ignore reality, the Communications Act of 1934, and the new Telecommunications Act by enacting anti-competitive rules designed to reduce interexchange competition (for the private benefit of the filing parties). These comments are

³ In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fifth Report and Order, 98 FCC 2d 1191, 1195-197 ¶¶ 6-7 (1984).

⁴ Notice ¶ 13.

worthy of very little note, as they are so palpably wrong in every material aspect (and in some immaterial aspects, as well). We review some of these comments very briefly herein.

Some comments are so hollow as to appear almost perfunctory.⁵ Excel, for example, in eight pages of meaningless rhetoric, contends that U S WEST could actually drive the combined AT&T, Sprint, and MCI triumvirate out of business (in addition to, presumably, all other BOCs, as well):

Over a period of time, a subsidized BOC interexchange affiliate may be able to drive enough competing firms out of the market as to destroy or impair competition. The result is that the BOC becomes a monopolist in that market as well.⁶

Of course Excel is unable to present even the tiniest fact to support this bizarre conclusion.

While Excel's position is the most ridiculous, it has plenty of company in the silly position department. TRA contends that failure to concoct a new rule classifying BOC out-of-region carrier operations, even if offered via a "fully separate subsidiary," a rule far more onerous than the current rules contemplate, would "delay, and perhaps stifle, nascent local competition and dampen existing interexchange competition."⁷ CompTel, basing its entire argument on the false

⁵ Commenters referenced herein include: Association for Local Telecommunications Services ("ALTS"); AT&T Corp. ("AT&T"); The Competitive Telecommunications Association ("CompTel"); Excel Telecommunications, Inc. ("Excel"); MCI Telecommunications Corporation ("MCI"); NYNEX Corporation ("NYNEX"); Pacific Telesis Group ("Pacific Telesis"); Sprint Communications Company, L.P. ("Sprint"); Telecommunications Resellers Association ("TRA").

⁶ Excel at 3.

⁷ TRA at 5.

contention that the interexchange carrier (“IXC”) is selected by the paying party in collect and third-party-billed calling situations, and an opaque effort to equivocate calling cards with 800 carrier services, requests that the Commission actually amend the new Telecommunications Act by treating an entire class of out-of-region interLATA services as in-region.⁸ ALTS posits an incomprehensible argument about BOC provision of out-of-region services giving BOCs an “unfair advantage in other areas. . . such as the rental of office space or the purchase of non-communications related goods or services. . . .”⁹ MCI, in addition to making its customary pitch based on the assertion that it is a more moral corporation than are the BOCs,¹⁰ sets forth an anti-competitive monstrosity it calls a “‘four way’ cost allocation and affiliate transaction monitoring regime” designed to further protect MCI from competition.¹¹

AT&T’s position is a bit more subtle (and, accordingly, more insidious). Obviously recognizing that a claim that the AT&T leviathan might be harmed (or even seriously threatened) by a BOC’s out-of-region activities is without foundation, AT&T’s argument that a BOC’s out-of-region services should be classified as

⁸ CompTel at 12-13.

⁹ ALTS at 6.

¹⁰ MCI at 14-17. See, however, Telecommunications Reports, Feb. 26, 1996, at 9-10, reporting on a series of multi-million dollar fraud suits against MCI and other IXCs for billing disputes. Applying MCI’s customary logic, neither MCI nor any other IXC can be trusted not to defraud their customers. U S WEST draws no such conclusions and makes no such allegations. It would likewise behoove MCI to tone down its moral bluster and focus on facts or, in cases like the instant case where facts do not exist, to simply be quiet.

¹¹ MCI at 19-20.

dominant relies primarily on what AT&T perceives as a procedural quirk to support its request that unnecessary regulations be imposed on BOCs. AT&T's argument is as follows. According to AT&T, the interexchange market is a seamless web, and Commission precedent has consistently held that market dominance in any niche of this seamless web must necessarily result in classification of the carrier as dominant throughout the market.¹² Thus, argues AT&T, classification of a BOC as non-dominant would constitute a change of position by the Commission and would therefore require a long and time-consuming rulemaking (during which time AT&T would be insulated from BOC interLATA competition).¹³

If AT&T's premise were correct, it would present a powerful argument as to why the Commission should be extremely careful when adopting restrictive legislation -- which often seems harder to eliminate after its usefulness has long passed than it was to adopt the rule in the first place.¹⁴ After all, the Commission's processes were not designed to prevent the elimination of useless rules. However, AT&T's premise is utterly false. Indeed, the "seamless-web" construct posited by AT&T was expressly disavowed by the Commission in giving AT&T significant

¹² AT&T at 4-7.

¹³ Id.

¹⁴ See, e.g., In the Matters of: Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof, Communications Protocols under Section 64.702 of the Commission's Rules and Regulations, Report and Order, 104 FCC 2d 958 (1986) ("Phase I Order"), on recon., 2 FCC Rcd. 3035 (1987) ("Phase I Reconsideration Order"), on further recon., 3 FCC Rcd. 1135 (1988), second further recon., 4 FCC Rcd. 5927 (1989), Phase I Order and Phase I Reconsideration Order, vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

deregulatory relief in certain aspects of the interexchange marketplace, while recognizing AT&T's continuing dominance in other areas -- exactly the opposite of what AT&T argues here. Moreover, as noted previously, the Notice here does not propose a new rule at all. The regulatory scenario proposed in the Notice represents the status quo, not some new regulatory structure which the Commission would need to justify prior to adoption. Right now, U S WEST and other BOCs may provide out-of-region interLATA services on a non-dominant basis via the same type of subsidiary as is used by other LECs. It is AT&T which is proposing that rules be changed -- and which must prove why they should be changed. As AT&T (quite understandably) has offered no evidence to support its position, its argument must be discarded.

II. THERE IS NO REASON TO IMPOSE NEW SUBSIDIARY REQUIREMENTS IN THIS DOCKET

Two commenting BOCs suggest that the subsidiary requirements set forth in the Notice represent an acceptable approach, at least on an interim basis, to BOC provision of out-of-region interLATA services.¹⁵ These comments are not seriously inconsistent with U S WEST's position, but merit brief attention.

Pacific Telesis states the legal construct as follows. The rules of the Commission permit a BOC to offer interLATA services as a non-dominant carrier today subject to the subsidiary rules devised in the Competitive Carrier docket.¹⁶

¹⁵ Pacific Telesis at 5-6; NYNEX at 3-4.

¹⁶ Pacific Telesis sets forth this analysis in Section I of its comments. Pacific Telesis at 2-4.

These same rules apply to all non-BOC LECs. Accordingly, Pacific Telesis, in the interest of regulatory parity, states its willingness to abide by the same subsidiary rules as apply to other LECs.¹⁷ Pacific Telesis emphatically rejects the notion that the subsidiary rules might be justified by some “market power” analysis and notes that the subsidiary rules need to be eliminated for all LECs, not just for the BOCs.¹⁸

There is, of course, some appeal in Pacific Telesis’ analysis. After all, there seems no reason to subject the interexchange services of a smaller LEC to harsher regulation than that applied to the same services offered by a much larger BOC. In point of fact, market power analysis demonstrates that there is no reason to apply subsidiary rules to any LEC interLATA service. The danger in acceding completely to Pacific Telesis’ analysis is that even the most temporary rules tend to become concretized all too quickly, and an “interim” subsidiary rule for BOC out-of-region interLATA operations could easily become a permanent nightmare. As there is no market-based reason for adoption of such a rule, even on an interim basis, the BOCs should be permitted to offer interLATA services out-of-region on a non-dominant basis without a subsidiary. If a subsidiary were to be required, the best approach would be to simply terminate this docket without decision and permit BOCs to offer out-of-region interLATA services under the current rules. In any

¹⁷ Id. at 5-6.


¹⁸ Id. at 4-6.

event, the rules as applied to smaller LECs at this time seem to have no basis in reality and should be eliminated expeditiously, as well.

Respectfully submitted,

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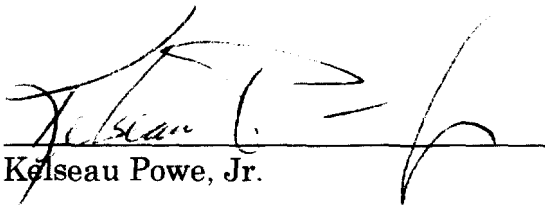
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March 25, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of March, 1996, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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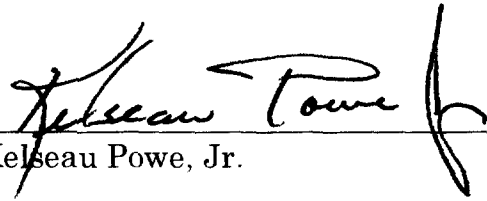
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